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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120627194-3657-02]

RIN 0648-XE567

Atlantic Highly Migratory Species; North Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; Swordfish General Commercial permit retention limit inseason adjustment for the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions.

SUMMARY: NMFS is adjusting the Swordfish (SWO) General Commercial permit retention limits for the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions for July through December of the 2016 fishing year, unless otherwise later noticed. The SWO General Commercial permit retention limit in each of these regions is increased from the regulatory default limits to six swordfish per vessel per trip. The SWO General Commercial permit retention limit in the Florida SWO Management Area will remain unchanged at the default limit of zero swordfish per vessel per trip. This adjustment applies to SWO General Commercial permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels when on a non-for-hire trip. This action is based upon consideration of the applicable inseason regional retention limit adjustment criteria.

DATES: The adjusted SWO General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions are effective July 1, 2016, through December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Rick Pearson or Randy Blankinship, 727-824-5399.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of North Atlantic swordfish by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. North Atlantic swordfish quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) into two equal semi-annual directed fishery quotas, an annual incidental catch quota for fishermen targeting other species or taking swordfish recreationally, and a reserve category, according to the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended, and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The 2016 adjusted North Atlantic swordfish quota is expected to be 3,359.4 mt dw (equivalent to the 2015 adjusted quota). From the adjusted quota, 50 mt dw would be allocated to the reserve category for inseason adjustments and research, and 300 mt dw would be allocated to the incidental category, which includes recreational landings and landings by incidental

swordfish permit holders, per § 635.27(c)(1)(i). This would result in an allocation of 3,009.4 mt dw for the directed fishery, which would be split equally (1,504.7 mt dw) between two seasons in 2016 (January through June, and July through December).

Adjustment of SWO General Commercial Permit Vessel Retention Limits

The 2016 North Atlantic swordfish fishing year, which is managed on a calendar-year basis and divided into two equal semi-annual quotas, began on January 1, 2016. Landings attributable to the SWO General Commercial permit are counted against the applicable semi-annual directed fishery quota. Regional default retention limits for this permit have been established and are automatically effective from January 1 through December 31 each year, unless changed based on the inseason regional retention limit adjustment criteria at § 635.24(b)(4)(iv). The default retention limits established for the SWO General Commercial permit are: 1) Northwest Atlantic region – three swordfish per vessel per trip; 2) Gulf of Mexico region – three swordfish per vessel per trip; 3) U.S. Caribbean region – two swordfish per vessel per trip; and, 4) Florida SWO Management Area – zero swordfish per vessel per trip. The default retention limits apply to SWO General Commercial permitted vessels and to HMS Charter/Headboat permitted vessels when fishing on non for-hire trips. As a condition of these permits, vessels may not possess, retain, or land any more swordfish than is specified for the region in which the vessel is located.

Under § 635.24(b)(4)(iii), NMFS may increase or decrease the SWO General Commercial permit vessel retention limit in any region within a range from zero to a maximum of six swordfish per vessel per trip. Any adjustments to the retention limits must be based upon a consideration of the relevant criteria provided in § 635.24(b)(4)(iv), which include: The

usefulness of information obtained from biological sampling and monitoring of the North Atlantic swordfish stock; the estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year; the estimated amounts by which quotas for other categories of the fishery might be exceeded; effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments; variations in seasonal distribution, abundance, or migration patterns of swordfish; effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota; and, review of dealer reports, landing trends, and the availability of swordfish on the fishing grounds.

NMFS has considered these criteria as discussed below and their applicability to the SWO General Commercial permit retention limit in all regions for July through December of the 2016 North Atlantic swordfish fishing year. Last year, through June 30, 2015, with application of the default retention limits, directed swordfish landings were 493 mt dw (32.8 percent of the 1,505 mt dw January to June semi-annual adjusted directed sub-quota). On July 28, 2015, NMFS adjusted SWO General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions from default levels to six swordfish per vessel per trip (80 FR 44884). Through December 31, 2015, directed swordfish landings for the July through December semi-annual period were approximately 659.9 mt dw (43.9 percent of the adjusted directed sub-quota). Preliminary total annual directed swordfish landings, through December 31, 2015, were approximately 1,152.9 mt dw, or 38.3 percent of the 3,010 mt dw annual adjusted directed swordfish quota. A six swordfish per vessel trip limit for SWO General Commercial permit holders was maintained for the period January 1, 2016, through June 30,

2016, in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions (80 FR 81770). As of April 30, 2016, directed swordfish landings were 268.2 mt dw (or 17.8% of the anticipated 1,504.7 mt dw adjusted directed sub-quota).

Given that directed swordfish landings in 2015 fell well below the adjusted 2015 annual quota, and that 2016 directed landings continue to be below the anticipated 2016 annual swordfish quota, and considering the regulatory criteria, NMFS has determined that the SWO General Commercial permit vessel retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions applicable to persons issued a SWO General Commercial permit or HMS Charter/Headboat permit (when on a non for-hire trip) should be increased from the default levels that would otherwise automatically become effective on July 1, 2016.

A principal consideration is the objective of providing opportunities to harvest the full North Atlantic directed swordfish quota without exceeding it based upon the 2006 Consolidated HMS FMP goal to, consistent with other objectives of this FMP, “manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.” At the same time, it is also important for NMFS to continue to provide protection to important swordfish juvenile areas and migratory corridors.

After considering all of the relevant criteria, NMFS has determined that increases from the default limits are warranted. With respect to the regulatory criteria, NMFS has examined dealer reports and landing trends and determined that the information obtained from biological sampling and monitoring of the North Atlantic swordfish stock is useful. Recently implemented

electronic dealer reporting provides accurate and timely monitoring of landings. This information indicates that sufficient directed swordfish quota will be available from July 1 through December 31, 2016, at the higher retention levels, if recent swordfish landing trends continue. Regarding the regulatory criterion that NMFS consider “the estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year,” the directed swordfish quota has not been harvested for several years and, based upon current landing trends, is not likely to be harvested or exceeded during the remainder of 2016. Based upon recent landings rates from dealer reports, an increase in the vessel retention limit for SWO General Commercial permit holders is not likely to cause quotas for other categories of the fishery to be exceeded. Similarly, regarding the criteria that NMFS consider the estimated amounts by which quotas for other categories of the fishery might be exceeded and the effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota, NMFS expects there to be sufficient swordfish quota for 2016, and thus increased catch rates in these three regions are not expected to preclude vessels in any of the other regions from having a reasonable opportunity to harvest a portion of the overall swordfish quota. Landings by vessels issued this permit (and Charter/Headboat permitted vessels on a non for-hire trip) are counted against the adjusted directed swordfish quota. As indicated above, this quota has not been exceeded for several years and, based upon current landing trends, is not likely to be exceeded during the remainder of 2016.

With regard to swordfish abundance, the 2015 report by ICCAT’s Standing Committee on Research and Statistics indicated that the North Atlantic swordfish stock is not overfished

($B_{2011}/B_{msy} = 1.14$), and overfishing is not occurring ($F_{2011}/F_{msy} = 0.82$). Increasing the retention limits for this U.S. handgear fishery is not expected to affect the swordfish stock status determination because any additional landings would be in compliance with the ICCAT recommended U.S. North Atlantic swordfish quota allocation.

Based upon landings over the last several years, including 2016, it is highly unlikely that either of the two semi-annual directed swordfish subquotas would be harvested with the default retention limits of three swordfish per vessel per trip (Northwest Atlantic and Gulf of Mexico), and two swordfish per vessel per trip (U.S. Caribbean). For the entire 2015 fishing year, 38.3 percent of the total adjusted directed swordfish quota was harvested. Thus far, swordfish landings in 2016 have been less than landings during the same period in 2015.

Increasing the swordfish General Commercial permit retention limits to six fish per vessel per trip will increase the likelihood that directed swordfish landings will approach, but not exceed, the total annual directed swordfish quota. Increasing opportunity beginning on July 1, 2016, is also important because of the migratory nature and seasonal distribution of swordfish, one of the regulatory criteria to be considered when changing the retention limit in season (variations in seasonal distribution, abundance, or migration patterns of swordfish). In a particular geographic region, or waters accessible from a particular port, the amount of fishing opportunity for swordfish may be constrained by the short amount of time the swordfish are present as they migrate. Dealer reports for Swordfish General Commercial permitted vessels indicate that swordfish are available from July through December in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions.

Based upon these considerations, NMFS has determined that a six-fish per vessel per trip swordfish General Commercial permit retention limit is warranted in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions from July 1, 2016 through December 31, 2016, for swordfish General Commercial permitted vessels and HMS Charter/Headboat permitted vessels when on a non for-hire trip. This will provide a reasonable opportunity to harvest the U.S. quota of swordfish without exceeding it, while maintaining an equitable distribution of fishing opportunities; help achieve optimum yield in the swordfish fishery; allow for the collection of data for stock monitoring purposes; and be consistent with the objectives of the 2006 Consolidated HMS FMP, as amended. With regard to the objectives of the FMP, this adjustment provides the greatest overall benefit to the Nation, particularly with respect to food production, by increasing commercial swordfish fishing opportunities without exceeding the available quota. It helps to preserve a traditional swordfish handgear fishery (rod and reel, handline, harpoon, bandit gear, and greenstick) which, in New England, dates back to the 1880s. Although this action does not specifically provide recreational fishing opportunities, it will have a minimal impact on this sector because recreational landings are counted against a separate incidental swordfish quota. Finally, as discussed in the next paragraph, this action takes into account the protection of marine ecosystems by maintaining a zero-fish retention limit in the Florida Swordfish Management Area. Therefore, NMFS increases the swordfish General Commercial permit retention limits from the default levels to six swordfish per vessel per trip in these three regions, effective from July 1, 2016 through December 31, 2016, unless otherwise noticed.

NMFS has determined that the retention limit will remain at zero swordfish per vessel per trip in the Florida SWO Management Area at this time. As described in Amendment 8 to the

2006 Consolidated HMS FMP, the area off the southeastern coast of Florida, particularly the Florida Straits, contains oceanographic features that make the area biologically unique. It provides important juvenile swordfish habitat, and is essentially a narrow migratory corridor containing high concentrations of swordfish located in close proximity to high concentrations of people who may fish for them. Public comment on Amendment 8, including from the Florida Fish and Wildlife Conservation Commission, indicated concern about the resultant high potential for the improper rapid growth of a commercial fishery, increased catches of undersized swordfish, the potential for larger numbers of fishermen in the area, and the potential for crowding of fishermen, which could lead to gear and user conflicts. These concerns remain valid. NMFS will continue to collect information to evaluate the appropriateness of the retention limit in the Florida SWO Management Area and other regional retention limits.

These adjustments are consistent with the 2006 Consolidated HMS FMP as amended, ATCA, and the Magnuson-Stevens Act, and are not expected to negatively impact stock health.

Monitoring and Reporting

NMFS will continue to monitor the swordfish fishery closely during 2016 through mandatory landings and catch reports. Dealers are required to submit landing reports and negative reports (if no swordfish were purchased) on a weekly basis.

Depending upon the level of fishing effort and catch rates of swordfish, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure that available quota is not exceeded or to enhance fishing opportunities. Subsequent actions, if any, will be published in the **Federal Register**. In addition, fishermen may access

<http://www.nmfs.noaa.gov/sfa/hms/species/swordfish/landings/index.html> for updates on quota monitoring.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP, as amended, provide for inseason retention limit adjustments to respond to changes in swordfish landings, the availability of swordfish on the fishing grounds, the migratory nature of this species, and regional variations in the fishery. Based on available swordfish quota, stock abundance, fishery performance in recent years, and the availability of swordfish on the fishing grounds, among other considerations, adjustment to the swordfish General Commercial permit retention limits from the default levels is warranted. Analysis of available data shows that adjustment to the swordfish daily retention limit from the default levels would result in minimal risks of exceeding the ICCAT-allocated quota. NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register**, e-mailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the “Atlantic HMS Breaking News” website at http://www.nmfs.noaa.gov/sfa/hms/news/breaking_news.html.

Delays in temporarily increasing these retention limits caused by the time required to publish a proposed rule and accept public comment would adversely affect those SWO General Commercial permit holders and HMS Charter/Headboat permit holders that would otherwise have an opportunity to harvest more than the default retention limits of three swordfish per

vessel per trip in the Northwest Atlantic and Gulf of Mexico regions, and two swordfish per vessel per trip in the U.S. Caribbean region. Further, any delay beyond July 1, 2016, the start of the second semi-annual directed fishing period, could exacerbate the problem of low swordfish landings and subsequent quota rollovers. Limited opportunities to harvest the directed swordfish quota may have negative social and economic impacts for U.S. fishermen. Adjustment of the retention limits needs to be effective on July 1, 2016, to allow all of the affected sectors to benefit from the adjustment during the relevant time period, which could pass by for some fishermen if the action is delayed for notice and public comment, and to not preclude fishing opportunities for fishermen who have access to the fishery during a short time period because of seasonal fish migration. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.24(b)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: June 9, 2016.

Alan D. Risenhoover,
Director,

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National Marine Fisheries Service.

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